

4/29/69

## Memorandum 69-63

Subject: Study 52 - Sovereign Immunity (Claims Statute)

At the April 1969 meeting, the staff was directed to draft a bill repealing the cross-references to the Uniform Claims Act. A preliminary search of the 100 district laws in the Water Code Appendix reveals several types of cross-reference statutes. The various types of cross-reference statutes with the staff's suggested amendments are set forth herein. The suggested amendments do not change existing law. This matter is brought to the Commission's attention at this time to expedite this matter. It is hoped that, at the May meeting, we can establish the desired changes, if any, so that, upon completion of the search for all such claims provisions, a recommendation can be prepared that will require minor changes, if any, by the Commission when the recommendation is considered at a future meeting.

Although there is considerable legislative history on the Uniform Claims Act, there is no express indication of the Commission's reasons for enacting the cross-reference statutes. However, in Van Alstyne's "Third Progress Report Claims Statute Draft," the draftsman's intent is indicated: "In each case, in order to give notice and prevent the General Claims Statute from acting as a trap, it is recommended that an appropriate provision be inserted making express cross-reference to the General Claims Statute."

Perhaps it could be argued that the purpose for enacting the cross-reference statutes has been met by the lapse of time since the claims

statute was enacted. In this connection, it should be noted that Title 2 of Part 2 of the Code of Civil Procedure (OF THE TIME OF COMMENCING CIVIL ACTIONS), in Chapter 1 (The Time of Commencing Actions in General) contains two sections:

§ 312. General limitations; special cases

Civil actions, without exception, can only be commenced within the periods prescribed in this title, after the cause of action shall have accrued, unless where, in special cases, a different limitation is prescribed by statute.

§ 313. Claims against local public entities

The general procedure for the presentation of claims as a prerequisite to commencement of actions for money or damages against the State of California, counties, cities, cities and counties, districts, local authorities, and other political subdivisions of the State, and against the officers, employees, and servants thereof, is prescribed by Division 3.6 (commencing with Section 810) of Title 1 of the Government Code.

This provision may provide sufficient notice of the claims presentation requirement. Nevertheless, the bar's general unfamiliarity with the Uniform Claims Act is indicated by the current controversy over the claims statute. Perhaps it would be best not to eliminate the cross-references to the Uniform Claims Act. In this connection, it should be noted that the deletion of the cross-reference in Claims Statute Cross-Reference Type 2 (discussed below) does not produce any substantial shortening of the provision.

Claims Statute Cross-Reference Type 1

All claims for money or damages against the district are governed by Part 3 (commencing with Section 900) and Part 4 (commencing with Section 940) of Division 3.6 of Title 1 of the Government Code except as provided therein, or by other statutes or regulations expressly applicable thereto.

This common provision exists in 22 of the 100 district laws examined. This provision has no purpose other than to give notice to potential

claimants and to prevent the Tort Claims Act from acting as a trap. Sections 905 and 900.4 of the Government Code make the Tort Claims Act applicable to all independent local public entities including districts. Thus, the entire provision could be deleted without altering existing law.

#### Claims Statute Cross-Reference Type 2

Claims for money or damages against the district are governed by Part 3 (commencing with Section 900) and Part 4 (commencing with Section 940) of Division 3.6 of Title 1 of the Government Code, except as provided therein. Claims not governed thereby or by other statutes or by ordinances or regulations authorized by law and expressly applicable to such claims shall be prepared and presented to the governing body, and all claims shall be audited and paid, in the same manner and with the same effect as are similar claims against the county.

This common provision exists in 38 of the 100 district laws examined.

The purpose of the provision is twofold:

(1) The first sentence is designed to provide a cross-reference to the Uniform Claims Act. It serves the same purpose as Cross-Reference Type 1 and could be deleted without changing existing law.

(2) The second sentence is intended to provide a procedure governing the presentation and payment of claims by incorporating generally the procedure for presentation and payment of claims against counties.

The substance of this sentence should be retained to leave undisturbed the prior legislative determination that the procedure for preparing, presenting, auditing, and paying claims shall be the same as that of the county in which the district exists. In this connection, it should be noted that, prior to the attempt to insert the cross-reference to the Uniform Claims Statute in all of the special district laws, these statutes generally provided:

Claims against the agency shall be prepared, presented, audited, and allowed or disallowed in the same manner and within the same periods of time specified in the laws of the State of California, now or hereinafter enacted, for preparing, presenting, auditing, and allowance or disallowance of claims against the county.

#### Proposed Revision of Cross-Reference Type 2

To retain the substance of existing law in an understandable form, the staff recommends the Cross-Reference Type 2 statutes be revised to read:

Except as provided by statute or by charter, ordinance, or regulation authorized by law and expressly applicable to such claims, claims against the district shall be prepared and presented to the governing body in the same manner and with the same effect as are similar claims against the county. All claims shall be audited and paid in the same manner and with the same effect as are similar claims against the county.

#### Miscellaneous Variations of Cross-Reference Type 2

The statutes set forth below incorporate the exact language of the Type 2 statute and additional matter (underscored). It is suggested that the underscored matter be left unchanged and that the remaining language be conformed to the changes made in the cross-reference statute Type 2.

##### 1. (§ 1-3.1)

Claims for money or damages against the district are governed by Part 3 (commencing with Section 900) and Part 4 (commencing with Section 940) of Division 3.6 of Title 1 of the Government Code, except as provided therein. Claims not governed thereby or by other statutes or by ordinances or regulations authorized by law and expressly applicable to such claims shall be prepared and presented to the governing body, and all claims shall be audited and paid, in the same manner and with the same effect as similar claims against the county. The county auditor shall draw his warrant on the county treasurer for the amount of any claim allowed in whole or in part in the same manner as if ordered by the board of supervisors.

2. (§ 6-9)

All such charges and expenses shall be deemed as expenses of said work or improvement, and be a charge only upon the funds devoted to the particular work or improvement as provided hereafter. Claims for money or damages against the district are governed by Part 3 (commencing with Section 900) and Part 4 (commencing with Section 940) of Division 3.6 of Title 1 of the Government Code, except as provided therein. Claims not governed thereby or by other statutes or by ordinances or regulations authorized by law and expressly applicable to such claims shall be prepared and presented to the governing body and all claims shall be audited and paid, in the same manner and with the same effect as are similar claims against the county.

3. (§ 9-11)

All moneys collected from such district for such taxes, and all moneys received from any source for the benefit of such district shall be by the county treasurer placed in a fund, to be called the "Levee District Fund"; and all payments of any of the expenses of the work or improvements or other expenses of such district shall be made upon warrants drawn by the county auditor upon such fund, and paid by said treasurer. Claims for money or damages against the district are governed by the provisions of Part 3 (commencing with Section 900) and Part 4 (commencing with Section 940) of Division 3.6 of Title 1 of the Government Code, except as provided therein. Claims not governed thereby or by other statutes or by ordinances or regulations authorized by law and expressly applicable to such claims shall be prepared and presented to the governing body, and all claims shall be audited and paid, in the same manner and with the same effect as are similar claims against the county.

4. (§ 13-19.1)

Claims for money or damages against the district are governed by the provisions of Part 3 (commencing with Section 900) and Part 4 (commencing with Section 940) of Division 3.6 of Title 1 of the Government Code, except as provided therein. Claims not governed thereby or by other statutes or by ordinances or regulations authorized by law and expressly applicable to such claims shall be prepared and presented to the governing body, and all claims shall be audited and paid, in the same manner and with the same effect as are similar claims against the county.

For the purposes of the claims procedures required by this section, the board of supervisors of the county in which the storm water district was organized shall be deemed the governing body of the district, and payments of claims allowed in whole or in part by said board of supervisors shall be paid upon a warrant drawn by the auditor of the said county upon the order of said board in the same manner as claims upon the county treasury.

5. (§ 59-15)

Claims for money or damages against the district are governed by the provisions of Part 3 (commencing with Section 900) and Part 4 (commencing with Section 940) of Division 3.6 of Title 1 of the Government Code, except as provided therein. Claims not governed thereby or by other statutes or by ordinances or regulations authorized by law and expressly applicable to such claims shall be prepared and presented to the governing body, and all claims shall be audited and paid, in the same manner and with the same effect as are similar claims against the county. The district may employ counsel to defend any action or proceeding brought against it on account of any taking, injury, damage or destruction, or to defend as provided in Part 6 (commencing with Section 995) of Division 3.6 of Title 1 of the Government Code an action or proceeding brought against any of its officers, employees, or servants, and the fees and expenses involved therein are a lawful charge against the district.

6. (§ 75-11)

Claims for money or damages against the district are governed by Part 3 (commencing with Section 900) and Part 4 (commencing with Section 940) of Division 3.6 of Title 1 of the Government Code, except as provided therein. Claims not governed thereby or by other statutes or by ordinances or regulations authorized by law and expressly applicable to such claims shall be prepared and presented to the governing body, and all claims shall be audited and paid, in the same manner and with the same effect as are similar claims against the County of Merced. For the purposes of this section the County Auditor and the County Treasurer of Merced County are ex officio the auditor and treasurer of the district. Any reasonable and necessary expenses actually incurred by Merced County in carrying out any of the provisions of this act relating to the district shall be paid out of the funds of the district applicable thereto.

Conforming Amendments

Several claims statutes never were amended when the Commission comprehensively revised the claims statutes. One statute was apparently overlooked and the other was enacted after the Commission's 1959 recommendation. These statutes (Water Code App. §§ 82-12, 102-42) read:

Claims against the district shall be prepared, presented, audited and allowed or disallowed in the same manner and within the periods of time specified in the laws of the State of California, now or hereafter enacted, for the preparing, presenting, auditing, and allowance or disallowance of claims against the county [counties § 102-42].

These two statutes are identical to other statutes which were amended in 1959 and 1963 to conform to Type 2 statutes. Thus, these sections, though intended to have the same meaning as the Type 2 statutes, use different language to convey the same meaning. This creates unnecessary inconsistency and could be the basis of future litigation. These two statutes should be made identical to the Type 2 statutes.

Respectfully submitted,

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